IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

CRP.No. 957 of 2007(D)

OS.181/2006 OF I ADDL.SUB COURT,ERNAKULAM.

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PETITIONER/RESPONDENT/DEFENDANT:

MRS. THRESSIA, W/O. XAVIER,
DOOR NO.36/809, KATTUNILATH HOUSE, OPPOSITE LISSIE HOSPITAL, LISSIE HOSPITAL ROAD,
KALOOR, ERNAKULAM.

BY ADV. SRI.B.JAYASANKAR,
ADV. SRI.N.C.SAJITH.

RESPONDENT/PETITIONER/PLAINTIFF:

SULIMAN ABOOBAKER SAIT, S/O. ABOOBACKER,
JAWARIA, OPPOSITE YMCA, CHITTOOR ROAD,
ERNAKULAM.

BY ADV. SRI.BABU KARUKAPADATH.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/11/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 957 OF 2007

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Dated this the 30th day of November, 2007.

O R D E R

This revision petition is preferred against the order of the 1st Addl. Subordinate Judge, Ernakulam in I.A.6050/06 in O.S.181/06. The brief facts necessary for the disposal of the revision are stated as follows.

2. There was a suit for specific performance of a contract which was compromised between the parties on 7.7.06. As per the stipulations in the award 40 lakhs were given by two cheques. It further contain a clause to pay Rs.10 lakhs on 18.7.06 and on payment of the same the original title deed has to be handed over to the counsel for the defendant and the balance amount has to be paid on 21.8.06. The balance amount as on 21.8.06 is fixed at Rs.34,39,500/-. It is also recited that in case of default committed by the plaintiff the defendant is entitled to adjust 10% of the amount as damages and pay back the balance amount. There is no quarrel between the parties that on 18.7.06 as stipulated in the award instead of 10 lakhs Rs.20

lakhs was paid. Now, the dispute is with respect to the payment on 21.8.06. The definite case of the plaintiff is to the effect that he was ready with the money and on 20.8.06 he has contacted the defendant who was laid up on account of a fracture of the femur and she had requested time for executing documents as she was not able to make arrangements for getting all the documents necessary for the execution of the sale deed. It is also the case of the plaintiff that thereafter immediately he contacted counsel for the defendant and intimated to him about his readiness. On the contra the defendant would contend that there has been no such contact as contended by the plaintiff and that the plaintiff has gradually withdrawn from the terms of the award. On 19.9.06 he had issued a lawyer notice and thereafter only this application for extension of time to make the payment of the balance amount had been filed by the plaintiff before the Court.

Admittedly, the suit transaction involves a very huge amount of more than 94 lacks and as on 18.7.06 an

amount of Rs.70 lakhs had already been paid and the balance amount due was only 34,39,500/-. It is a settled principle that if there are sufficient justifiable grounds the Court can extend the time for making payment even in a compromise award. This position has been settled by the Apex Court in the decision reported in ***Thomas v. Thomas Job (2005 (3) KLT 1042)***. The Court held that the civil Court has jurisdiction to extend the time agreed to between the parties to such an award. Competency of the Court to grant time has been considered by the Apex Court in the decision reported in ***Ramankutty Guptan v. Avara (1994 (1) KLT 453).*** The Apex Court has held that if the payment is not made even within the time originally fixed or extended, what would be the sufficient time depends upon the terms of the decree and that we are not concerned in this appeal. The learned counsel for the revision petitioner submits before me there is a specific clause which deals with the failure to pay the amount at the agreed rate it vests on the defendant to adjust 10% of the amount so paid and only to give back the

balance. In the decision reported in ***Ramesh v. John K. Joseph (1995 (1) KLT 801)*** also this Court has taken the view that there is a power vested with the Court in extending the time for making the payment. Now, the only question to be considered is whether there exists sufficient grounds for extension of time or not. At the out set it has to be stated that as on 18.7.2006 the plaintiff has paid 70 lakhs out of 94 lakhs of the purchase price. It shows that he is really eager and willing to purchase the property and it is further amplified by the fact that when he is liable to pay Rs.10 lakhs on 18.7.06 at the request of the defendant he had made a payment of Rs.20 lakhs which shows the bonafides of him in purchasing the property. Now, the question for consideration is whether on or before 21.8.06 he was in a position to pay the amount and whether he has really made an attempt to make the payment etc. It is seen that on 14.7.06 he had assigned his property for a consideration of about Rs.84 lakhs and most probably it is out of that consideration he had paid Rs.20 lakhs to the defendants in the case. So, when that fact

is proved it is clear that on such date he was having large amount of cash with him. It is under these circumstances the case whether he approached the defendants for fulfillment of the award or whether what the defendant states is true. The defendant had no dispute that she had sustained a fracture which she had denied in the statement but it has been proved by admission in her cross-examination. Therefore, there was physical disability for her as she was in the hospital for almost 14 days. It is under such a situation the plaintiff has approached the defendant for complying with the terms of the award. It is at that point of time it has been submitted by the plaintiff that the defendant prayed for time and that was the reason for the delay. In order to prove that factor he would submit that he immediately contacted the counsel appearing for the defendant and expressed his willingness to perform his part of the contract. In this case the counsel who was appearing for the defendant had been examined as PW2 and his evidence would show that the plaintiff has contacted him somewhere around 21.8.06 for expressing his willingness

to perform his part of the contract. So these matters will go to show that there is preponderance of probabilities in what the plaintiff says. One of the ingredients relied upon by the Court below is regarding the purchase of the stamp paper for applying for the certified copy of Ext.B11 document. Ext.B11 document is a receipt of 8.12.1124 M.E. and stamp paper for the certified copy was purchased only on 2.9.06 and as per the terms of the award the document is to be executed on 21.8.06 which only justifies the contention of the plaintiff that there was request made by the defendant to get some more time for production of documents. The Court below has considered the entire evidence threadbare and analyzed it and had arrived at a decision that there exists cogent, convincing ground whereby the time can be extended. As held by me earlier there is also prima facie evidence which would satisfy the conscience of the Court regarding the availability of the funds with the plaintiff for the reason that he had assigned the property for Rs.84 lakhs on 14.7.06. Therefore, I do not find any ground to interfere with the

decision rendered by the Court below. From the over all contact of the plaintiff I am also convinced that he had always the intention and desire to go through the contract and get the property assigned in his favour and therefore the revision is liable to be dismissed as the impugned order does not suffer from any perversity, illegality or irregularity. Therefore, the C.R.P. is dismissed.

M.N. KRISHNAN, JUDGE.

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